

United States  
Environmental Protection  
Agency

Region 8, Montana Office  
Federal Building  
301 S. Park, Drawer 10096  
Helena, Montana 59626-0096

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Administrative Record

SF File Number

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20.16

January 27, 1986

Mr. Joe Felsman, Chairman  
Tribal Council  
Confederated Salish and Kootenai Tribes  
P.O. Box 278  
Pablo, MT 59855

Dear Mr. Felsman:

Thank you for your comments on the Remedial Investigation/Feasibility Study (RI/FS) Work Plan at Somers, MT. This letter is EPA's response to your comments.

1. Your letter states that Article 52 of the Order, which allows the private principals to assert a business confidentiality claim covering information collected during the RI/FS, will create a mistrust of the Superfund process, and that all information collected should be available for public review.

EPA is required by law to preserve confidential business information that industry or individuals may be required to submit to EPA (See 40 C.F.R. Part 2). A trade secret is an example of such information. Any EPA officer or employee who discloses confidential business information except as authorized by regulation is subject to dismissal, suspension, fines, or criminal prosecution.

Although a corporation, company, or person may request information to be held confidential, EPA makes the final determination as to whether the information will be held confidential. To be held confidential, the information must be submitted and reviewed in accordance with EPA regulations at 40 C.F.R. Part 2. Where EPA determines that the information submitted is not confidential, the information may then be released by EPA. To date, BN has not made a business confidentiality request with any of the information it has submitted to EPA relative to the Superfund studies at Somers.

2. You suggest that EPA allow the public to review any proposed changes to the Order prior to making them under Article 57. If any changes are proposed, EPA will make them available to the public for review.

3. You expressed a concern that only 10-15 percent of all samples taken from the site will be independently tested by EPA; and that EPA will not duplicate any of BN's work without good cause, while some duplication would be desirable to confirm data collected by BN.

I believe you are referring to a statement I made during the November 21, 1985 public meeting in Somers regarding EPA oversight of BN's testing. At that meeting, I stated that during investigations where a party other than EPA (in this case BN) conducts the Superfund investigations, EPA oversees field testing, and generally splits in the neighborhood of 10-25 percent of the samples taken by the other party. EPA then analyzes these samples in laboratories which are independent of the other party. The purpose of overseeing field work and splitting samples is to provide a cost-effective check on the work of BN.

EPA has the authority under Superfund to require the person(s) responsible for the contamination to perform the investigation and cleanup activities, under close EPA supervision. This allows more Superfund sites to be cleaned up with fewer EPA (taxpayer) resources. The investigations and cleanup must still be performed to EPA's satisfaction. EPA closely supervises the planning, implementation, reporting, and conclusions of the field investigations, and the ultimate cleanup.

Article 49 of the Order states that EPA will not arbitrarily conduct the same studies that it has ordered BN to conduct under the Order, unless EPA has a good reason. "Good reason" could include, among others, such reasons as improper or invalid completion of the studies by BN, refusal by BN to conduct the studies, or that BN does not have access to the equipment or expertise necessary to conduct the studies. EPA has the authority under the Superfund law to attempt to recover its costs of overseeing BN's performance, and cannot be arbitrary in incurring those costs. Article 49 does not preclude EPA from confirming data collected by BN, something EPA will do on a percentage basis by splitting and independently analyzing samples at Somers.

4. Your letter states that the shoreline protection placed between the lake and the swamp pond area during the emergency removal last May is not sufficiently protecting the shoreline from erosion.

The shore barrier was not constructed with the idea that it would be the final fix for the swamp pond area. The barrier has always been viewed as a temporary fix, but one which would buy enough time (approximately 2 years) to further study the extent of contamination in the swamp pond area, and design and implement the most appropriate long-term remedy. A small amount of erosion at the edges of the barrier may be acceptable, particularly since the barrier extended beyond the edges of the known surface contamination in the swamp pond area. I examined the barrier in November 1985, and found no erosion at the south end, and only a small amount of erosion of the shoreline

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at the north end. Newspaper accounts of the storm that apparently caused most of the erosion indicated that the docks and wharves south of Somers received extensive damage.

If you have any other questions or concerns, please contact me at the above address or at 449-5414 in Helena.

Sincerely,

*Original signed by:*

Eric Finke  
Remedial Project Manager

cc: Beth Mullin, 8RC  
Marilyn Null, 80EA  
Sharon Foote, WH-527  
Mike Rubich, SHWB